Sambo's Restaurant, Inc. ***and*** **Hotel, Motel, Restaurant Employees and Bartenders International Union, Local No. 483, AFL-CIO.** Cases 32-CA-3013 and 32-RC-1123

26 April 1984

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 11 December 1981 Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.

1. The judge, finding that the Union represented a majority of the Respondent's employees on 17 July 1980,[3] granted the General Counsel's request for a bargaining order as a remedy for the Respondent's unfair labor practices. Noting that the parties were in agreement as to the validity of 17 authorization cards, and as to the inclusion of 38 employees in the bargaining unit (the status of two other employees was disputed), the judge concluded that "the Union had a slim majority of 21 valid authorization cards out of a unit of 38 or 39 employees." Contrary to the judge, however, and for the reasons fully set forth below, we shall exclude the union authorization cards of Theresa Remata and Marguerite Feeny.

As found by the judge, Theresa Remata signed a union-authorization card on 3 July 1980 given her by then-employee Deryl Hess. The judge credited, by implication,[4] Remata's testimony that when Hess handed Remata the card, Hess stated that if "more than 50 percent of the people . . . sign[ed] the card, that we would have a right to an election," and that signing the card "didn't mean that I had to vote yes, just that there would be an election."

The judge also found that Hess gave Marguerite Feeny a union-authorization card on 2 July 1980. The judge credited, by implication,[5] Feeny's testimony that Hess stated that "if we got enough cards signed that there would be an election. It didn't mean that we had to vote for the Union, that it only meant that there would be an election, that we would still have the freedom to vote yes or no . . . when it came the time."

Having made the above factual findings, the judge nonetheless concluded that the cards of Remata and Feeny were valid, and that "they were not told that the only purpose of the card was for an election." (JD sec. III,C,3, par. 9.) We disagree.

As stated above, Remata testified that Hess told her that signing the card meant "just that there would be an election." Likewise, Feeny testified that Hess told her "that it only meant that there would be an election." We find, therefore, in accordance with the Supreme Court's decision in *Gissel Packing*,[6] that the cards of Remata and Feeny are invalid. In that decision, the Supreme Court approved the Board's *Cumberland Shoe*[7] doctrine, stating:[8]

> Under the *Cumberland Shoe* doctrine, if the card itself is unambiguous . . . it will be counted unless it is proved that the employee was told that the card was to be used *solely* for the purpose of obtaining an election.

The Court held that a card is invalid if its language is "deliberately and clearly cancelled by a union adherent with words calculated to direct the signer

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We adopt the judge's conclusion that the record evidence was insufficient to establish that Deryl Hess was discharged in violation of Sec. 8(a)(3) of the Act. We therefore find it unnecessary to reach the issue of whether Hess' admission that she regularly gave away food to family members would disqualify her from reinstatement had we found her discharge to be discriminatory.

[3] The 17 July 1980 date is the date on which the last union authorization card was signed.

[4] Although the judge did not specifically state that he "credited" Remata's and Feeny's testimony, his decision so reflects. Thus, at fn. 11 of his decision, the judge discredited Hess with respect to all of her testimony concerning the solicitation of union-authorization cards, and, did not discredit either Remata or Feeny. We note in this regard that Hess is the only individual alleged to have solicited Remata and Feeny; and indeed, had the judge intended to also discredit both Remata and Feeny by his use of the word "alleged" when referring to their testimony (see the judge's decison sec. III,C,3, par. 9), there would have been no need for him to discuss the legal implications of such testimony. Accordingly, in finding the cards of Remata and Feeny to be invalid, we rely on their testimony set out by the judge at sec. III,B,3, pars. 9 and 11 of his decision.

[5] See fn. 4 above.

[6] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

[7] *Cumberland Shoe Corp.*, 144 NLRB 1268 (1963), enfd. 351 F.2d 917 (6th Cir. 1965).

[8] *Gissel Packing*, above at 584.

to disregard and forget the language above his signature."[9]

A review of the testimony clearly demonstrates that Hess' words canceled the language of the authorization cards at issue, inasmuch as Hess told Remata and Feeny that the only purpose of signing the card was to have an election. Such testimony was not retracted by either Remata or Feeny, and was ultimately relied on by the judge in his legal analysis. We conclude that their cards cannot be counted toward a determination of whether the Union achieved majority status.

Accordingly, since the loss of Remata's and Feeny's cards destroys the Union's majority, a bargaining order is not warranted.[10] We shall, therefore, delete that portion of the judge's recommended remedy which relates to issuance of a bargaining order.

2. In accordance with the judge's findings that the record contains insufficient evidence that the Respondent committed any unfair labor practices during the critical period following the 21 July 1980 filing of the representation petition, we shall certify the results of the election held 10 September 1980.[11]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Sambo's Restaurant, Inc., Carmel, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 2(a) and reletter the remaining paragraphs accordingly.

2. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein be dismissed.

IT IS FURTHER ORDERED that the objections to the election held on 10 September 1980 be overruled.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Hotel, Motel, Restaurant Employees and Bartenders International Union, Local No. 483, AFL-CIO, and that it is not the exclusive representative of all the employees in the unit herein involved.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT threaten our employees with discharge because of their union activities or protected concerted activities.

WE WILL NOT create the impression of surveillance by advising employees that we are aware of their union activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

SAMBO'S RESTAURANT, INC.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in Monterey, California, on July 16, 17, 24, and 25, 1981. The initial charge was filed on August 26, 1980,[1] by Hotel, Motel, Restaurant Employees and Bartenders International Union, Local No. 483, AFL-CIO (herein called the Union). Amended charges were filed by the Union on October 29 and November 28.

Thereafter, on November 28, the Regional Director for Region 32 of the National Labor Relations Board (herein called the Board) issued a complaint and notice of hearing alleging a violation by Sambo's Restaurant, Inc. (herein called Respondent) of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act).

Pursuant to a representation petition filed by the Union on July 21 in Case 32-RC-1123, the parties entered into a Stipulation for Certification Upon Consent Election approved by the Regional Director on August 13, and thereafter an election by secret ballot was conducted in the agreed-upon unit[2] on September 10. The tally of ballots reflects that of the approximately 26 eligible voteres, 5 cast ballots for the Union and 13 cast ballots against the Union. Thereafter, the Union filed timely objections to the election, which objections, on November 28, were consolidated with the unfair labor practice

[9] Id. at 606.

[10] Thus, the invalidation of Remata's and Feeny's authorization cards leaves only 19 cards in a unit of at least 38 employees. We therefore find it unnecessary to pass upon the validity of the union-authorization card of employee Douglas Newton.

[11] The tally of ballots reflects that of the approximately 26 eligible voters, 5 cast ballots for, and 13 cast ballots against, the Union.

[1] All dates or time periods herein are within 1980 unless otherwise specified.

[2] The unit is as follows:

All fulltime and regular part-time employees employed by Respondent at its Highway 1 facility in Carmel, California; excluding all office clerical employees, confidential employees, guards, and supervisors as defined in the Act.

proceeding for the purpose of hearing, ruling, and decision by an administrative law judge.

The parties were afforded a full opporunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel and counsel for Respondent.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a California corporation with an office and place of business in Santa Barbara, California, and has been engaged in the business of owning and operating a chain of restaurants, including the restaurant involved herein located on Highway 1, in Carmel, California. Respondent, in the course and conduct of its California business operations, annually derives gross revenues in excess of $500,000, and purchases and receives goods and services valued in excess of $5,000 directly from suppliers located outside the State of California. It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues raised by the pleadings are: whether Respondent violated Section 8(a)(1) and (3) of the Act by threatening employees with discharge and by discharging employee Deryl Hess, and whether the circumstances herein warrant the setting aside of the representation election and the issuance of a remedial bargaining order.

B. *The Facts*

1. The 8(a)(1) violations

Respondent's former restaurant manager, Randy Hurst, became aware of the employees' union activity at its inception. Thus, shortly after the employees obtained authorization cards from the Union, in early June, employee Lynn Neuenfeldt received a phone call at home from Hurst, who told her that he had heard that she was trying to start the Union, and added that "I don't want you to try and start a union on company time." A short time later, employee Deryl Hess was advised by another employee that Hurst was upset about Hess' union activity. Thereupon, Hess approached Hurst and advised him that she and another employee had gone to the union hall for the purpose of obtaining information, but had no present intention of pursuing the matter further.

Hess and other employees, during July, became actively involved in soliciting signatures on union authorization cards. In about mid-July, Hess received a phone call from Hurst who said, "I understood you're going for the Union." Hess replied yes, and Hurst replied, "Well, I just want to tell you that you'd better not do it on company times."

Louis Murray, who quit Respondent's employ during the latter part of July, testified that, sometime in July, Hurst approached him and stated that he had heard that Murray and Brendan Fee has signed union cards. Murray replied, "So what if we did," and Hurst said, "Well, that's okay we'll get rid of you—fire you all each one by one, everybody that signs a union card." Hurst terminated the conversation by stating that the employees were a bunch of "back stabbers."[3]

Shortly thereafter, Murray had a similar conversation with Hurst and Assistant Manager Richard Werner. Hurst stated, "Why would you people want to do this. You're just screwing yourselves. If you did join the Union, Sambo's wouldn't go for a union house, Bob Whitehouse[4] wouldn't go for a union house." Then, according to Murray, Hurst repeated that everyone who signed a union card would be fired one by one. Murray asked Hurst when he had learned of the union activity, and Hurst replied that he knew of the activity "ever since Deryl [Hess] had started this." Murrary inquired how he knew Deryl was the one who started it, and Hurst said that he had inside information. Murray testified that he related the aforementioned conversation to both Hess and employee Jean Barrows. Hurst did not testify in this proceeding as discussed below. Assistant Manager Richard Werner, who was called by Respondent as a witness in this proceeding, did not deny that Hurst made the statements attributed to him by Murrary.

About the end of July, at the restaurant, Hurst and Hess discussed the fact that Hurst was leaving Respondent's employ. Hurst said that he hoped everything worked out well for Hess, adding that in his opinion the Union had good benefits, and offered a good program. He then invited her back to his office, and handed her a letter that he said had been prepared for his signature, by Bob Whitehouse, Respondent's regional manager, for distribution to all the employees. The letter contains Respondent's position that a union is unnecessary, and requests that the employees not sign a union card if approached. Hurst gave Hess a copy of the letter and said that he had no intention of distributing it to the employees, as instructed by Whitehouse.

2. The discharge of Hess

Deryl Hess worked as a waitress for Respondent from September 1976 until August 21, 1980, when she was discharged for serving her 8-year-old son a 47-cent beverage without paying for it.

This incident, which occurred on August 12, was observed by Lori Riddell, who immediately reported it to

[3] Employee Cristen Hess, who overheard the conversation, corroborated Murray's testimony regarding this conversation.

[4] Whitehouse is Respondent's regional manager.

her husband, Bruce Riddell, newly appointed restaurant manager. Bruce Riddell had been an assistant manager at another Sambo's restaurant prior to July 29, on which date he was transferred to the position of Respndent's restaurant manager upon the departure of Hurst.

Hess admitted serving a root beer to her son on that date, telling him, as Lori Riddell testified, to "Get out of here before Bruce [Riddell] sees you." According to Hess, her son had requested a hamburger and french fries in addition to the beverage, and Hess told him that he would have to settle for the root beer as she could not afford the other items. Hess testified that she did not write up a guest ticket for the root beer, but took the change out of her pocket and put it in the register about an hour after the incident occurred.

Hess testified that in early 1979 she had been warned about giving food away by Manager Jim Della, who had prepared a guest check for her and instructed her to pay for pie and iced tea which she had given to a customer. Hess also stated that she customarily served her husband in the restaurant three or four times a week, and that her son would also come in on a not infrequent basis. She estimated that during her 4 years of employment she had failed to write up a guest check for this food "maybe once a week," but would put the correct amount of money in the register nevertheless, knowing that she wsa violating company policy in failing to prepare a guest check. Hess also candidly admitted that, during the same 4-year period, she had served food to members of her family without paying for it "maybe a couple of times a month." Further, Hess testified that she had worked under Riddell when he was an assistant manager at the Carmel restaurant, and acknowledged that she believed he was a "company man" who was very strict about enforcing the rules.

As noted above, Riddell became manager of the Carmel restaurant on July 29. Riddell testified that in the summer of 1977, during his previous tenure at the Carmel restaurant as assistant manager, he and then Manager John Stidham confronted Hess with the accusation that she had served various food items to her husband, but had written up a guest check only for iced tea. Hess, according to Riddell, initially denied that she had done this, and then, upon futher interrogation, admitted the fact. Stidham advised her that the offense was cause for termination. Hess acknowledge this, alluded to financial hardship as her husband was not working, and promited never to do it again. Stidham said that, if it should ever happen in the future, he would immediately terminate her. Riddell stated that, primarily as a result of that incident, he thereafter remained suspicious of Hess' honesty and truthfulness.[5]

Riddell stated that he received an election petition in the mail shortly after assuming his present managerial position, and thus became aware of the fact that an organizational campaign was in progress. Thereupon, he maintained contact with the individual in charge of Respondent's labor relations, who initially advised Riddell regarding the election campaign, and cautioned him to be careful and contact him regarding any proposed disciplinary action against employees.

Riddell testified that on August 12, at the restaurant, his wife summoned him to where she was sitting, and told him that she had seen Hess give a drink in a glass to her son, then transfer it into a paper container, and tell her son to sneak out so that Riddell would not see him. Riddell asked his wife to watch Hess to see if she wrote a guest check or paid for the item. Also, Riddell inspected the guest checks at the register, and spoke to several waitresses to find out if they had been asked by Hess to write a ticket for the drink, or had taken any cash from her in payment. Before Riddell could speak to Hess about the matter, she had left for the day. Thereupon, he called Respondent's labor relations manager, and advised him of the facts.

The next day Riddell confronted Hess at the end of her shift, and advised her that she had been observed giving food away without writing a ticket or paying for the item, and that such conduct was a violation of company policy. Hess said, "You must mean my son, Hans." Riddell told her that he knew of at least two other managers who had warned her about this. Hess replied that Riddell was apparently referring to former manager Jim Della. Riddell said no, and named former managers John Stidham and Guillermo Tamaya.[6] Hess admitted not writing a guest check for her son, but said that she had paid for the drink at the end of the shift. Riddell said that he would have to suspend her. Hess replies that other waitresses had broken the same rule and had given away food, and that she was being treated unfairly, adding that she was "financially in a very bad way." She asked if one of her daughters, who also worked for Respondent, could take her shift during her suspension. Riddell agreed. Immediately thereafter, Riddell wrote out a conduct and ability report stating that Hess was being suspended pending a decision on termination. The report further states that "not writing a guest check for food and or giving food away to a cutomer is cause for termination, previous management has warned you verbally of this."

Later that day, two employees, Jean Barrows and her daughter Lynn Neuenfeldt spoke to Riddell and Assistant Manager Werner about the matter. They asked why Hess had been suspended, and stated that other employees were giving away food while Riddell was not on duty. Riddell said he was not aware of this, and Barrows told him about the night cooks, namely, Leonard Carter, Russ Abernathy, and particularly Brendan Fee, Riddell's half brother, who habitually helped themselves and served their friends foods which was not paid for. Riddell said he would have to witness this for himself. Thereupon, Barrows and Neuenfeldt offered to be witnesses. Riddell, according to Barrows and Neuenfeldt, said this would have to be handled through the head office in similar manner as he had to handle the Hess sus-

[5] Hess denies that the incident described by Riddell ever occurred or that she ever received a warning from Stidham. Stidham, who owns 15 percent of Respondent's Carmel restaurant operations, fully corroborated Riddell's testimony.

[6] While Riddell was assistant manager under Tamaya, he was told by Tamaya that Hess had been given a warning about failing to write guest checks.

pension, and offered to give them the number of the head office to make their complaint. During the course of the conversation, Barrows mentioned that she was not aware of the rules requiring another waitress to verify that an employee had put cash into the register to cover a personal guest check, and suggested that this procedure should be posted. Riddell replied that Hess was cognizant of all the rules as she was a longtime employee.

Riddell's account of the aforementioned conversation with Barrows and Neuenfeldt is quite different. Thus, Riddell testified that he advised the employees he could proceed against Fee if he had firsthand knowledge that Fee was giving away food, or had a witness who would give him something in writing to that effect. Thereupon, according to Riddell, Neuenfeldt mentioned that Fee was his relative and doubted that he would discharged him. At this point, Riddell offered her the number of the head office, but Neuenfeldt did not seem interested, stating that nothing would become of it. Richard Werner corroborated Riddell's account of the conversation.

Within a few days, Riddell caused to be posted a notice to the effect that all employees were to pay for food consumed while they were not on duty, including coffee, unless they had exercised their option to have the food money taken out of their paycheck.

About a week later, on August 21, Hess was called in by Riddell. Hess asked if Neuenfeldt could be present as a witness, and Riddell agreed. Thereupon, Riddell advised Hess of her discharge and read to her a second conduct and ability report which he had prepared as follows:

> Giving out food to a customer without a ticket; putting money in register for own ticket or food consumed, without another salesperson to verify is immediate cause for termination. You have stated that at least 1 prior manager has warned you of this to me.[7]

Again, Hess stated she was being treated unfairly, and maintained that she had been fired for her union activity. Riddell replied that she was entitled to her opinion. She further stated that Brendan Fee has also been guilty of giving away food. Riddell said he did not know this, and had no firsthand knowledge of this.

Riddell testified, when questioned about the various reasons he proffered in support of the discharge, that giving away food was equivalent to theft, and he did not like to use this reason on the employee's termination record. Moreover, he deemed the two reasons stated in the termination report to be sufficient and, in fact, admitted by Hess. However, on an "Employee Access System" form which he prepared on August 29, Riddell states, in addition to the other reasons for Hess' termination, "gave food away to relatives [sic] son Hans."

[7] In Riddell's affidavit, given on October 16, Riddell states that "all cash sales are to be rung up. This is the rule on which I relied in terminating her."

3. The Union's majority; authorization cards

It is admitted that all full-time and regular part-time employees employed by Respondent at its Highway 1 facility in Carmel, California, excluding all office clerical employees, confidential employees, guards, and supervisors as defined in the Act, constitute the appropriate unit herein.

The parties have agreed to the unit inclusion of 38 employees as of July 17, the date when the last authorization card was signed. However, the status of two employees, Gail Fennell the Colleen Feeney, is in dispute. Respondent would include both employees in the unit, while the General Counsel maintains that they should be excluded.

Gail Fennell was a hostess at the restaurant employed on a full-time basis. According to Hess, Fennell and Manager Hurst were married in mid-June. Thereafter, Fennell helped out taking cash at the register on an occasional basis. One record of Respondent, prepared by Riddell on November 19, reflects that the last day Fennell worked was June 10. Riddell testified that he selected this date without firsthand information as he did not became manager of the restaurant until July, but that in reviewing the timesheets he determined that Fennell's name did not appear thereon subsequent to June 10. However, another timesheet provided by Respondent as the hearing shows that Fennell was on the payroll through July 24, and worked 40 hours per week from July 11 through July 24. Moreover, Riddell testified that he is "pretty sure" that Fennell and Hurst were married after July.

Colleen Feeney was a part-time guest check person. Her employment code reflects that she was considered to be an "office" employee, and she describes herself as a bookkeeper on the authorization card she signed. Her primary duties were to audit guest checks and to prepare reports based thereon. There is no probative record evidence that she ever assumed the duties of a waitress, hostess, or cashier. As noted above, the General Counsel would exclude Feeney as an office clerical employee.

The parties are in agreement that 17 authorization cards introduced into evidence at the hearing constitute valid authorizations of the Union as collective-bargaining representative. Respondent maintains, however, that the authorization cards[8] signed by five individuals are invalid. The General Counsel and the Union argue that they should be found to be valid designations of the Union as bargaining representative in support of the Union's majority status.

Douglas Newton signed an authorization card on July 17. Newton testified that he was given the card by Deryl Hess and her daughter Candy Hess. Newton was asked if he "wanted to sign a card for the Union, to bring in a Union," and was told that Mike and Robert Yee, two other cooks, had previously signed, and that Manager Hurst knew about it. Also, according to Newton, Deryl

[8] The cards bear the name of the Union, and state, "I, the undersigned, designate and authorize Local #483 to represent me, in my behalf to negotiate and conclude agreements as to wages, hours and working conditions."

Hess told him that it did not matter whether he wanted the Union or not, it was just to get an election. Newton said he signed "because they told me that Mike and Robert had signed, and that Randy [Hurst] knew about it, and I thought, you know, if that is what everybody wanted, why not." Later that evening, Mike and Robert Yee said they had not signed and that Hurst did not know about it. Thereupon Newton asked for the return of his card, but was unable to obtain it as it had been turned in to the Union; he was also purportedly told by both Deryl and Cristen Hess, upon requesting the return of his card, that it did not matter whether he had signed the card because "it was just how I voted in the election." Newton testified that the main inducement causing him to sign the card was the representation that the Yees had signed; and that he changed his mind after signing the card and really did not want the Union.

On cross-examination, Newton testified that Hess told him the card was "for a union, to get an election"; that the Yee brothers told him that they had not signed cards, and further told him that Hurst did not know about the union solicitation; and that Hess had said when he signed the card that "there would be no big hassle, and this and that." Newton said he "didn't really" read the card, but "just sort of filled it out." Newton also admitted that Hess spoke to him about union benefits and said "something like" "if you want these benefits, sign the card." Further, Newton stated that when he asked Candy Hess for the return of his card, he told her, "I had changed my mind about, you know, about signing the card to get the Union in."

Deryl Hess denied that Newton was told that Mike and Robert Yee had signed authorization cards, and testified that she knew from personal conversations with the Yee brothers that they were not for the Union. Moreover, she denies that she told Newton that the card was only for an election, testifying that she was not even aware that an election was one of the options available to the Union at that time. Rather, according to Hess, she explained that the card was for union representation, and in response to Newton's apparent concern that management might find out about his signing the card, assured him that no one would know. Cristen Hess was not called as a witness either to rebut Newton's testimony or to corroborate the testimony of Deryl Hess.

Theresa Remeta, a current employee, signed an authorization card on July 3. In early June, Remeta and Hess went to the union office and discussed union benefits with Business Representative Leonard O'Neil. According to Remeta, who acknowledged that her recollection of the meeting is very vague, O'Neil said that a vote was necessary to get the Union in. Remeta further testified that, on about July 3, Hess handed her an authorization card at work and asked her to sign it, stating that "if I could get more than 50 percent of the people to sign the cards, that we would have a right to an election." Hess further told her that signing the card "didn't mean that I had to vote yes, just that there would be an election." Remeta signed the card. She also took one home to her sister Colleen Feeney and, repeating to Feeney what Hess had stated about the significance and purpose of the card, requesting that she sign it. Feeney did so.

According to Hess, O'Neil mentioned nothing about an election during the aforementioned meeting at the union office in early June. Rather O'Neil showed them blank authorization cards and said, "These are the cards that will have to signed by everybody if you want us to represent you," adding that the employees should let him know when they were ready to begin the solicitation. A month later, according to Hess, at the restaurant, Remeta became angry with something Hurst had said to her. As he came out of Hurst's office, she stated, "I want to go for the Union." Thereupon, Hess asked if Remeta wanted her to get the authorization cards and Remeta said, "Let's go for it." Shortly thereafter Hess handed her a card and stated, "Here's one of the authorization cards that I got and we have to sign these so that the Union can represent us." According to Hess, Remeta signed it and gave it to Hess the next day.

Marguerite Feeney, a current employee, testified that Hess presented her with a card on July 2, spoke to her about union benefits, and said, "If we got enough cards signed that there would be an election. It didn't mean that we had to vote for the Union, that it only meant that there would be an election, that we would still have the freedom to vote yes or no, you know, when it came the time." Feeney said she might have read the card, but does not remember. She also spoke to her sister Colleen Feeney about the card, as had Remeta, relating to Colleen what Hess had stated about the purpose of the card.

Brendan Fee, a current employee and half-brother of Manager Bruce Riddell, signed an authorization card on July 15. Fee testified that 2 or 3 days prior to signing the card he had various discussions with Hess about union benefits, and that he discussed the matter with a few employees who had previously signed cards. At the time he signed the card, Fee attempted to get an "idea" of who "might" have signed cards, and Hess named a number of employees who "she believed" had signed cards, including Mike and Robert Yee. She also said the "main basis" of the cards was to get an election, "and that they weren't, you know, showing that I was for or against in any way of the Union." Fee admitted reading the card "real quick" before he signed it, and stated that he "pretty much" understood what the card meant.

After signing the card, he spoke to a number of employees whom Hess had named, including the Yees, and "a couple or three other employees." The Yees said they had not signed. Thereafter, he spoke to Newton and decided that "it would smart to withdraw my card because the majority that I was concerned with hadn't signed cards." He then asked Hess for the return of his card, and she said it was impossible.

Fee was not certain when the various conversations with Hess occurred, and repeatedly testified that he "thought" the day he signed the card was when he asked Hess to identify others who had signed. He also testified that, a day or two before he signed the card, Hess told him the "main basis" for signing was to get an election, and that there would be an election "as long as a majority of the people in the restaurant signed the cards." Fee testified that his memory was very vague regarding when the various aforementioned statements were alleg-

edly made by Hess, and readily acknowledged that he could not recall specifically what Hess said. He further admitted that he was speculating regarding these matters.

Hess denied that she mentioned anything about an election to Fee, or represented to him that the Yees had signed cards, or that Fee requested the return of his card. Hess testified that she told Fee the purpose of the card was to obtain union representation.

Karen Wofford, a current employee, testified that Hess told her that signing the card "did not mean I was for the Union, and it only meant that if I signed the card and we had 50 percent of the employees sign that we would get an election." Wofford said she did not want to risk her job by signing a card, and Hess replied that only the Union would see it. A few days later, on July 5, Hess gave her a card and she signed it. Wofford testified that she does not recall if she read the card prior to signing it. According to Wofford, Hess suggested she could talk to a union representative about the Union, and Wofford spoke with Union Representative Janice Bedell sometime after she signed the card. Wofford testified that she does not recollect the specifics of her conversation with Bedell.

C. *Analysis and Conclusions*

1. The 8(a)(1) violations

Randy Hurst, Respondent's former manager, left Respondent's employ under unfriendly circumstances, and did not testify in this proceeding despite Respondent's futile attempts to obtain his presence at the hearing.[9] Respondent maintains that, under these circumstances, Hurst's failure to testify should not be deemed as implicit that he made the statement attributed to him.

I credit employee Lynn Neuenfeldt and find that she received a phone call from Hurst in early June, and that during the conversation Hurst did state that he was aware of her union activity, and warned her that she should not engage in such activity on company time. Similarly, I credit Hess regarding this matter and find that in about mid-July she received a similar call from Hurst. Such statements are unlawful, in that apprising employees that Respondent is privy to sources of information regarding their union activity reasonably tends to discourage such activity. See *American National Stores*, 195 NLRB 127, enfd. 471 F.2d 656 (8th Cir. 1972). I thus find that Hurst's remarks were violative of Section 8(a)(1) of the Act, basing my finding on the testimony of Neuenfeldt, Hess, and Jean Barrows, who corroborated Neuenfeldt's testimony in material respects. Each of the aforementioned employees appeared to have a clear recollection of the events in question, and the record demonstrates no basis for discrediting their respective accounts of the phone conversations.

Louis Murray signed a union card on July 16, and Brendan Fee signed a card on July 15. As stated above, Murray testified that Hurst approached him "during the latter part of July" and stated that Hurst had heard that he and Fee had signed union cards, and that Respondent would get rid of all the card signers, whom he referred to as a bunch of "back stabbers," one by one. A virtually identical conversation between Murray and Hurst occurred shortly thereafter. Significantly, according to Murray, Assistant Manager Werner was present during the latter conversation. Murrary favorably impressed me as a credible witness. While he candidly admitted his animosity toward Hurst who, Murray claimed, cheated him out of $500 in a pyramid scheme, Murray's hostility toward Hurst, no longer in Respondent's employ, has not been shown to have been directed toward Respondent. Further, Cristen Hess, who overheard a substantial portion of the first conversation between Murray and Hurst, credibly corroborated Murray's testimony. Finally, it is of considerable significance that Assistant Manager Werner, who was named as being privy to the second conversation, did not deny or rebut Murray's testimony, even though Werner was called as a witness by Respondent for other matters. See *Gulf-Wandes Corp.*, 233 NLRB 772, 777 (1977), enfd. as modified 595 F.2d 1074 (5th Cir. 1979). I thus find that Hurst made the threats attributed to him by Murray and Cristen Hess. Clearly such threats of discharge and statements, advising employees that the identity of union adherents are known to Respondent, are violative of the Act. I so find. *Tri-City Paving*, 205 NLRB 174 (1973).

In late July, as he was preparing to leave Respondent's employ, Hurst indicated to Hess that he favored the Union, and did not intend to cooperate with higher management's attempt to disseminate certain antiunion campaign propaganda. Hurst's change in attitude does not operate as a retraction of his prior threats, particularly since the employees could have reasonably interpreted Hurst's threats of discharge as the intention of Respondent's higher management, rather than merely the personal opinion of Hurst.

2. The discharge of Hess

The record is clear that Respondent was well aware of Hess' union activity. While Riddell testified that his knowledge of the union activity was very limited, it is clear, and I find, that officials and representatives of Respondent, with whom Riddell conferred prior to Hess' discharge, were aware of Hess' involvement. Thus, the record shows that Hurst was aware that, as he told Murray, Hess had instigated the union activity. Absent any evidence to the contrary, it is reasonable to presume that Hurst's knowledge had been related to those management representatives with whom Riddell conferred regarding the suspension and discharge of Hess. See *James T. Hughes Sheet Metal*, 224 NLRB 835 fn. 2 (1976).

I find the record evidence insufficient to establish that Deryl Hess was suspended or discharged in violation of the Act. After observing Riddell throughout the course of the hearing, and carefully evaluating his testimony, I find him to be a highly credible witness who, as a newly appointed manager, did indeed consider it his responsibility to strictly enforce the rules, as Hess confirmed during

[9] Respondent represented on the record that Hurst had been subpoenaed to appear at the hearing, but failed to do so. Further, Respondent determined that it would not seek enforcement of the subpoena in order to compel Hurst's appearance.

her testimony. Moreover, I find that Hess had been warned by Respondent's former manager, Stidham, in the presence of Riddell, that she would be discharged should she again give away food to her family, and that this and other warnings by prior management caused Riddell to be duly suspicious of Hess' honesty. Riddell's suspicions were not unfounded, as Hess admitted during the course of her testimony that she gave away food to family members on a not infrequent basis during the entire course of her employment. Hess did not impress me as a candid witness regarding the events of August 12, and I find that such events occurred as credibily testified to by Riddell and his wife, and that Hess did not pay for the drink she served her son. The record is clear that giving away food is considered to be a serious offense warranting dismissal. Finally, it is significant that Respondent is not alleged to have committed any other unfair labor practices during Riddell's tenure as manager.

While the General Counsel attempted to demonstrate that certain rules Hess was alleged to have breached by not writing a guest check, and not having a witness when putting money in the register to pay for her own purchases, were commonly violated by many employees, the record is clear that the primary and underlying reason for Hess' discharge was that Riddell believed Hess had given away food. Although the record shows that other employees may have engaged in the same or similar conduct with impunity, such evidence is insufficient to prove disparate treatement since there is no evidence that Riddell, who had been restaurant manager for only 2 weeks prior to Hess' suspension, was aware of such occurrences which, the record demonstrates, took place while Riddell was not on duty.

Moreover, the August 13 conversation between Riddell and Werner and employees Barrows and Neuenfeldt during which the employees maintained that Brendan Fee, Riddell's half-brother, had eaten and given away food without paying for it, does not mandate a different conclusion. The testimony of Riddell and Werner differs materially from that of Barrows and Neuenfeldt, who testified that Riddell stated, in effect, that their accusations concerning Fee should be directed to the head office. Conversely, Riddell, corroborated by Werner, testified that he then and there afforded the employees an opportunity to give statements to substantiate their accusations against Fee, but that the employees seemed unresponsive to this suggestion, feeling that a statement would be of no avail.

While both sets of witnesses appeared confident of the accuracy of their respective recollections of the conversation, it is clear that, regardless of whether the employees had given statements directly to Riddell, the ultimate determination regarding Fee would have been the prerogative of higher management representatives at the head office, who had the decision to discharge Hess. Moreover, the Hess matter had occurred while Riddell was on duty, thereby permitting him to launch an immediate investigation, while entirely different circumstances obtained in connection with the matters raised by Barrows and Neuenfeldt. Thus, assuming arguendo that the employees' account of the conversation is correct, I would find such evidence insufficient to show disparate treatment.

As I have found the record evidence insufficient to establish that Hess was discharged in violation of Section 8(a)(3) of the Act, I shall dismiss this allegation of the complaint. Further, even assuming arguendo that Hess was discriminatorily discharged, her admission at the hearing that she did give away food to members of her family with regularity would seem insufficient to preclude her reinstatement, as such misconduct is clearly an offense warranting discharge.

3. The Union's majority; authorization cards

I conclude that, on July 17, the Union had a slim majority of 21 valid authorization cards out of a unit of 38 or 39 employees. As noted above, the parties are in agreement regarding the validity of 17 authorization cards and the inclusion of 38 employees in the unit as of July 17. I find that the evidence is inconclusive regarding the status of Gail Fennell. Thus, whether or not Fennell was Manager Hurst's wife on July 17, or enjoyed special employee status, or even was on the payroll as of the date in question, these are relevant and material considerations not sufficiently established by the record. See *Riverside Community Memorial Hospital*, 250 NLRB 1355 (1980). In agreement with the General Counsel, the record sufficiently indicates, and I find, that Colleen Feeney is a clerical employee who enjoyed no community of interest with the unit employees herein, and should be excluded.

Employees' recantations vitiating the plain meaning of union authorization cards must be closely scrutinized, particularly in the context of prior unfair labor practices. *Winco Petroleum Co.*, 241 NLRB 1118, 1132 (1979). As the Supreme Court noted in *NLRB v. Gissel Packing Co.*,[10] at 608:

> We also accept the observation that employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the Union, particularly where company officials have previously threatened reprisals for union activity in violation of Section 8(a)(1).

I have previously found that Hurst, on two separate occasions, told Murray that each of the card signers would be discharged one by one. Threats of this nature are of the utmost seriousness and customarily result in their clear and intended purpose, namely, to cause employees to forthwith cease or disavow their support for the Union. *Devon Gables Nursing Home*, 237 NLRB 775, 776–777 (1978), enfd. 615 F.2d 509 (9th Cir. 1980); *Piggly Wiggly*, 258 NLRB 1081, 1082 fn. 8 (1981).

Respondent emphasizes in its brief that, even if it is found that Hurst made such threats to Murray, such statements should be deemed to be de minimis, as Murray was the only employee directly threatened with discharge. I find no merit in Respondent's contention, as

[10] 395 U.S. 575 (1969).

it is well-established Board law that such statements are presumed to be widely disseminated, and that the burden is upon Respondent to prove that the threats were not disseminated among the unit employees. *Devon Gables Nursing Home*, supra; *Piggly Wiggly*, supra; *General Stencils*, 195 NLRB 1109, 1110 (1972), revd. 472 F.2d 170 (2d Cir. 1972). Respondent, having taken the position that Hurst did not make the threats attributed to him, did not even attempt to rebut this presumption. Moreover, the record establishes that at least three employees, in addition to Murray, became aware of such threats, and there is no record evidence indicating that Hurst's threats were not further disseminated to additional employees.

Applying the foregoing principles and findings to the matter of the validity of certain authorization cards,[11] I find that the cards of emloyees Newton and Fee constitute valid designations of the Union as collective-bargaining representative. Newton's testimony regarding the circumstances surrounding his signing of the card was inconsistent. He variously testified that he signed the card to get union benefits; to get the Union in; to only get an election; and because other employees, particularly Mike and Robert Yee, had signed. On the basis of the foregoing, I find that Newton's inconsistent testimony does not establish with the necessary sufficiency that he was told or relied upon the alleged represenation that the purpose of the card was only to get an election. See *Walgreen Co.*, 221 NLRB 1096 (1975).

Moreover, I find it highly unlikely that Hess, knowing that Newton worked with the Yees, would have misrepresented to him that the Yees had signed cards, as Newton would certainly discover that this was not the case. Even assuming arguendo that Hess made such a representation, Newton testified that he also signed the card because Hess led him to believe that Manager Hurst knew about the soliciation and, apparently, did not oppose it. Thus, in conjunction with the various additional reasons Newton advanced for signing the card, I find the record insufficient to establish that the decisive factor was the alleged misrepresentation that the Yees had signed. *Marie Phillips, Inc.*, 178 NLRB 340 (1969), enfd. 443 F.2d 667 (D.C. Cir. 1970), cert. denied 403 U.S. 905 (1971). Further, Newton testified that, on conferring with the Yees, he learned that Hurst did oppose the union solicitation. It is thus reasonable to presume that not only did Newton learn that Hurst was indeed opposed to the Union, but that Hurst's threats regarding the fate of card signers were related to Newton by the Yees, and cause Newton's attempt to seek the return of his card.[12] Under such circumstances, and particularly considering the Supreme Court's observation in *Gissel Packing Co.*, supra, regarding the reliability of employees' testimony in the context of unfair labor practices, I find that Newton's attempt to revoke his authorization card was at least in part a result of Respondent's unlawful conduct and, as such, the attempted revocation was ineffective. *Warehouse Groceries Management*, 254 NLRB 252 (1981), and cases cited therein.

Fee's recollection of the specifics of the various conversations he had with Hess regarding the signing of the authorization card is admittedly vague and speculative. Moreover, he stated that he was told the "main basis" for signing the card was to have an election, and that he also read and understood the card. Such testimony certainly is insufficient to invalidate the card. See *Warehouse Groceries Management*, supra.

Further, Fee admitted that Hess allegedly told him that she "believed" certain employees had signed cards. In *Marie Phillips, Inc.*, supra, the Board points out that:

> Where the objective facts, as evidenced by events contemporaneous with the signing, clearly demonstrate that the misrepresentation was the decisive factor in causing an employee to sign a card, we shall not count such card in determining a union's majority.

Here, however, it is doubtful whether Hess' alleged "belief" that certain individuals signed cards constitutes a misrepresentation within the *Marie Phillips* rationale or, given Fee's vague recollection of the conversations, was made contemporaneous with the signing. Further, and most importantly, I discredit Fee insofar as his testimony may indicate that Hess' alleged statement that she "believed" certain other employees had signed cards was the decisive factor causing Fee to sign. Had Fee placed such determinative reliance on the signatures of the Yees and apparently others, it is clear that he would have conducted his own investigation into the matter prior to signing, rather than relying on Hess' alleged belief. Finally, assuming arguendo that Fee requested the return of his card, I find the unfair labor practices herein precluded such revocation. In this regard, it should be noted that, during Hurst's conversation with Murray, Fees was singled out as a known card signer. See *Warehouse Groceries Management*, supra.

The cards of Theresa Remeta and Marguerite Feeney are valid. Clearly they were not told that the only purpose of the cards was for an election. Rather, the statement allegedly made to these individuals that the cards were for an election are insufficient to invalidate them. *Winco Petroleum Co.*, 241 NLRB 1118, 1134 (1979); *Keystone Pretzel Bakery*, 242 NLRB 492 (1979); *Walgreen Co.*, 221 NLRB 1096 (1975). Moreover, the further alleged statements that, in effect, the employees were under no obligation to vote for the Union after having signed cards in likewise insufficient to invalidate them. *Fort Smith Outerwear*, 205 NLRB 592, 593 fn. 2 (1973); *L'Eggs Products*, 236 NLRB 354, 416 (1978), enfd. as modified 619 F.2d 1337 (9th Cir. 1980).

I credit the convincing testimony of Karen Wofford who repeatedly testified that she was told by Hess that the only purpose of her card was to get an election. Thus, I find her card to be invalid. *Walgreen Co.*, supra.

[11] In the following analysis of the validity of the authorization cards in question, I do not credit the testimony of Hess because her recollection of certain conversations appeared to be of questionable reliability.

[12] The Yee brothers were not called on to testify in this proceeding and therefore the record does not disclose how they became aware of Hurst's opposition to the Union. Thus, Hurst's threats constitute the only record evidence establishing such opposition.

4. Remedial bargaining order

Having determined that Hess was not discriminatorily discharged, but that the Union had obtained valid authorization cards from a majority of unit employees, the question remains whether the statements of Hurst, standing alone, are insufficient to warrant the imposition of a bargaining order. I determine that they are.

Respondent cites various cases in support of its position that a bargaining order is not warranted. I find these cases to be inapposite, as discussed below. In *7-Eleven Food Store*, 257 NLRB 108 (1981), the administrative law judge, in determining that a bargaining order was not warranted, placed substantial reliance on the fact that an unlawful threat of plant closure was made to one employee who was not a union supporter and, who did not discuss the threat with any of the other employees. In *Swanson-Nunn Electric Co.*, 256 NLRB 840 (1981), it was determined that the unfair labor practices, which did not include threats of any nature, were not so serious that they could not be eraricated by other than a bargaining order. Similar reasoning precluded a bargaining order in *American Sunroof Corp.*, 248 NLRB 748 (1980), in *Chef's Pantry*, 247 NLRB 77 (1980), and in *Joint Industry Board of the Electrical Industry*, 238 NLRB 1398 (1978). In the latter case, the Board states, at 1402, that the violations did not warrant a bargaining order as they "did not include threats to close the clinic or to lay off or discharge employees. In the absence of such threats, which the Board has held to be proscribed conduct of the most egregious sort, no basis exists for finding a violation of Section 8(a)(5) of the Act."

In determining that a bargaining order was not warranted despite threats of plant closure, the Board, with two members dissenting, states in *Sturgies-Newport Business Forms*,[13] at fn. 2, that:

> Although this statement refers to possible plant closing, it is a statement to a single employee by a minor supervisor. Similarly, Dangler's comment to Simms, in response to Simm's question, that it was his "personal feeling" that the plant would be closed if the union came in, while a threat, was indirect, was not volunteered, and was made by a minor supervisor to a single employee. Hence, these statements are not, in our view, sufficient to warrant a *Gissel* bargaining order, *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969). See e.g., *Sinclair & Rush, Inc.*, 185 NLRB 25, 30 (1970).

Finally, in *Tarrant Mfg. Co.*, 196 NLRB 794 (1972), the Board found no bargaining order was warranted, despite flagrant unfair labor practices, since the union did not attain majority status.

As noted above, Respondent has not met its burden of rebutting the presumption that the threats herein were disseminated among the unit employees. Moreover, the threats were of the utmost seriousness. See *Warehouse Groceries Management*, supra, and cases cited therein; *Piggly Wiggly*, supra; *Devon Gables Nursing Home*, supra; *Tri-City Paving*, supra.

[13] 227 NLRB 1426 (1977), enfd. 563 F.2d 1252 (5th Cir. 1977).

The impact of such serious threats lingers "long after the utterances have been stated." *General Stencils*, supra. See also *Tri-City Paving*, supra; *Great Atlantic & Pacific Tea Co.*, 230 NLRB 766 (1977); *7-Eleven Food Stores*, 257 NLRB 108 (1981). The Board has also stated that, in the context of serious unfair labor practices, the absence of further unlawful conduct during an interim period prior to the election does not eliminate the need for a bargaining order. *Piggly Wiggley*, supra. Thus, as a result of Hurst's repeated threat that each of the union supporters would be discharged one by one, I conclude that a bargaining order is warranted herein. *NLRB v. Gissel Packing Co.*, supra; *Warehouse Groceries Management*, supra. Such a bargaining order shall be dated from July 15, 1980, the approximate date on which Respondent committed the unfair labor practices which, I find, have made a fair election unlikely if not impossible. *Great Atlantic & Pacific Tea Co.*, supra.

As the record contains insufficient evidence that Respondent committed any unfair labor practices during the critical period following the July 21 filing of the petition, I shall dismiss the election objections. *Catholic Medical Center of Brooklyn*, 245 NLRB 808 (1979), enfd. 620 F.2d 20 (2d Cir. 1980). However, in view of the granting of the bargaining order herein, it shall be recommended that the election be set aside. *Great Atlantic & Pacific Tea Co.*, supra.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has violated and is violating Section 8(a)(1) of the Act, as alleged.
4. Respondent has not violated Section 8(a)(3) of the Act.

THE REMEDY

Having found that the Respondent violated and is violating Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Moreover, it is further recommended that the election herein be set aside and that Respondent be required to recognize the Union as the collective-bargaining representative of its employees in the unit described herein, and to post an appropriate notice. The bargaining order shall be effective as of July 15, 1980, the approximate date when Respondent threatened that each union adherent would be discharged.

Based on the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Sambo's Restaurant, Inc., Carmel, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge for engaging in union activity.

(b) Creating the impression of surveillance by advising employees that Respondent is aware of their union activity.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act.

(a) Recognize and bargain with the Union, on request, as the exclusive collective-bargaining representative of the Respondent's employees in the unit described herein.

(b) Post at Respondent's facility at Carmel, California, copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order, what steps Respondent has taken to comply.

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[15] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

*U.S. GOVERNMENT PRINTING OFFICE: 1985-461-629:10003